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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,842	07/01/2003	David A. Field	GP-302850	2768

7590 02/01/2007  
KATHRYN A. MARRA  
General Motors Corporation  
Legal Staff, Mail Code 482-C23-B21  
P.O. Box 300  
Detroit, MI 48265-3000

EXAMINER
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SUHOL, DMITRY

ART UNIT	PAPER NUMBER
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3725

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/01/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/611,842

Applicant(s)

FIELD ET AL.

Examiner

Dmitry Suhol

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-7 and 9-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-7, 10-14 is/are rejected.
- 7) ☐ Claim(s) 9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Double Patenting***

Claims 7, 9-12 and 14 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16 of copending Application No. 11/069173. Although the conflicting claims are not identical, they are not patentably distinct from each other because they only differ in terminology used. For example, the bending element and associated curvature described in application 11/069173 is an obvious variation of a draw die and associated curve extending between a first and second ends.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-6, 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eberle 212 in view of Geis '304. Eberle discloses a chain-turning system having most of the claimed elements including a u-shaped tube (30) having a curve with a portion being a circular arc (B.11) and clothoid transition portions (UK.11,UK.12)

extending toward the circular arc having a radius of curvature decreasing from zero (curvature of straight portions G.11 and G.12) to a radius of curvature of the circular arc at a point of integration (A.11,A.12). Limitations of claim 5 are shown in figure 5.

Geis is relied upon to teach a device like that of Eberle which discloses that it is known to provide a single drive sprocket with guides/guards having a first and second ends (figures 2, 4-5) which do not run the entire length of the track. Therefore it would have been obvious to one having ordinary skill in the art, at the time of the claimed invention, to have manufactured the guard (30) of Eberle so that it does not run the entire length of the chain for the purpose of cost savings and since Eberle clearly states that his guards/guides may encompass a wide variety of device including ones that do not cover the entire track length (col. 2, lines 36-49).

Regarding claims 4 and 6, such limitations would be obvious over disclosure of Eberle in col. 2, lines 36-49 and col. 6, lines 40-50 as the size of the curve would only depend on the sprocket used and the guard and/or guide utilized. Furthermore limitations of claims 4 and 6 are considered a design choice in that there is no disclosure of criticality or advantage to such shape and therefore they do not serve to patentably distinguish (see applicants disclosure, paragraph 0022).

Claims 1, 3-7, 10-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zatti '087 in view of Pirret (GB 2256384). Zatti discloses a bending die (16) which teaches that its shape may take on any desired shape including circular and spiral shapes (page 1, lines 1-4).

Pirret is relied upon to teach that it is known to provide a bending die that encompasses the use of a circular shape (4) with a clothoid/spiral transition portion (6) that has a radius of curvature decreasing from zero (end of the spiral die) to a radius of curvature of the circular arc at the point of integration (figures 1-2). Therefore it would have been obvious to incorporate the shape of Pirret in the device of Zatti for the purpose of producing decorative objects, since Zatti states that his device may take on any desired shape.

Regarding claims 10-12, the curve subtending an angle of 90, greater than 90 or less than 90, as required by claims 10-12 respectively, it is considered that Zatti as modified by Pirret encompasses all of the above limitations since the angle measurement would only depend upon the distance a pipe to be bent travels along the curved portion (as shown in figure 1). Regarding limitations of claim 14, lacking any clear distinguishing structural features it is considered that Zatti as modified by Pirret encompasses the limitation since his transition portion depends from the adjacent curve portion and thus has the same curvature (at least at the start).

Regarding claims 1, 3-6 and 13, since the die of Zatti as modified by Pirret contains all of the claimed features of the die the reference is considered to be capable of manufacturing a tube structure of the claims and therefore it would have been obvious to one with ordinary skill in the art, at the time of the claimed invention, to have manufactured a tube/pipe structure as claimed since it would only depend upon the desired structure to be achieved and since the die of Zatti is clearly capable of manufacturing the above structure.

***Allowable Subject Matter***

Claim 9 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments with respect to claims 1, 3-6 and 13 have been considered but are moot in view of the new ground(s) of rejection. With respect to the arguments regarding Double Patenting, it is noted that the filing dates of both applications are the same however 35 USC 101 states (emphasis added):

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Therefore more than a single patent may not be granted for the same invention (without a terminal disclaimer).

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

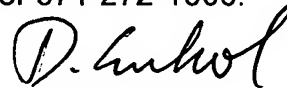
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dmitry Suhol whose telephone number is 571-272-4430. The examiner can normally be reached on Mon - Friday 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lowell Larson can be reached on (571) 272-4519. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Dmitry Suhol  
Primary Examiner  
Art Unit 3725

ds